IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5765 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PREMPRATAPSINGH SISODIYA

Versus

A C PATEL

Appearance:

1. Criminal Misc.Application No. 5765 of 1999

MR BK DAVE for Petitioners No. 1-2

MR ANANT S DAVE for Respondent No. 1

MR VIPUL PANCHOLI, APP for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 20/03/2002

CAV JUDGEMENT

1. Heard ld. Senior Counsel Mr. M.R. Barot with

Mr. B.Kumar, ld. Senior Counsel from Chennai with Mr. B.K. Dave, ld. counsel for the petitioner, ld. Addl. Standing Counsel Mr. Anant.S.Dave for Union of India complainant department and ld. APP Mr. Pancholi for the State.

2. This petition is filed under Section 482 of CrPC R/w Section 300 of CrPC whereby the petitioners-accused have prayed to quash and set aside the proceedings and trial of Special Criminal Case No. 70/95 pending in the Court of ld. Sessions Judge, Valsad at Navsari.

3. The petitioners have raised important question about the scope of exercise of inherent powers of this Court under Section 482 of CrPC and the application of Section 300 of CrPC, which inter alia, bars second trial of the accused already prosecuted for the same or similar offences bases on the same or similar evidence and resulted into acquittal of the accused which is in force and whether on the same and similar facts or evidence, accused could be permitted to be tried again. If such trial is permitted, whether such permission would violate the Scheme of Section 300 of CrPC ? It is further stated by the petitioners that effect of directions of the Apex Court specifically given protecting the interest of the accused, whether needs to be and how and in which manner should be implemented. The question of double jeopardy has also been raised by the petitioners.During the course of submissions, ld. Senior Counsel Mr. Barot has also raised the question whether the proceedings pending in the Sessions District of Valsad at Navsari, if allowed, would result into abuse of process of law and would result into miscarriage of justice. For short, it is argued that looking to the facts and circumstances of the case available on record, the aforesaid criminal proceedings require to be quashed and set aside.

4.(i) To substantiate the prayer advanced by the petitioners and contentions raised, the petitioners have stated facts in detail in para-2 of the petition. According to the petitioners, on 12.12.1994, 7 cylinders of material containing mandrax tablets were seized from Patel Roadways, Tuticorin, Tamil Nadu. The present petitioners were arrested by the officers of Customs, Tuticorin, Tamil Nadu with regard to the mandrax tablets seized. During the course of investigation and interrogation of the persons apprehended, Customs Tuticorin flashed an information to the Commissioner of Customs, Surat. The petitioners were questioned by the custom authorities , Tuticorin and after arrest, they were remanded to custody. After completion of

investigation, chargesheet was filed in the Court of ld. Special Judge (NDPS) Madurai, Tamil Nadu and a criminal case bearing No. 113/95 was registered. The petitioners were chargesheeted and prosecuted for the offence of conspiracy punishable under Section 29 of the Narcotic & Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act). Custom authorities had discovered certain mandrax tablets and case was registered where the present petitioners were named as accused. Thereafter, at a subsequent stage, the petitioners were formally arrested for the said offence and were chargesheeted.

(ii) Again, Spl.Court (NDPS) Madurai for the second chargesheet, registered criminal case No. 325/95. The said case was also registered for the offence of conspiracy, manufacturing of contraband goods under the NDPS Act and possession and transportation to India from one State to another and one of the charges included offence under Section 29 of NDPS Act.

(iii) On or about 26.3.1995, a third case was registered wherein petitioners and others were chargesheeted for the offences punishable under the provisions of NDPS Act for manufacture at a factory Hari Om in Chikhli in the State of Gujarat. Both the petitioners along with others are chargesheeted for manufacturing, possession, transport inter-State and also for the offence of conspiracy punishable under Section 29 of NDPS Act. This third case was registered as Criminal Case No. 417/95 in the Court of ld. Spl. Judge, Madurai. According to the petitioners, the prosecution specifically had placed reliance on a particular set of evidence i.e. " during the period June, 1994 to March, 1995 at Surat, Madras, Trichi, Tuticorin and at other places", the present petitioners along with other five accused with known and unknown persons entered into criminal conspiracy to do illegal acts regarding Psychotropic substances, which also included the charge of conspiracy punishable under Section 29 of the NDPS Act.

(iv) On or about 30.11.1994, custom authorities had searched a godown at Bangalore and recovered cylinders containing mandrax tablets. In this connection, criminal complaint was filed in the appropriate Court for the offence punishable under Sections 8(C), 22 and 29 of NDPS Act. The charges were framed against the accused which included the same charge i.e. "both of you have conspired in the manufacture, transport and sell of mandrax tablets, punishable under Section 29 of the Act."

(v) Both the petitioners were the accused in four different criminal cases and the present petition is in connection with fifth criminal case filed against the present petitioners and three others on the basis of the complaint filed in September, 1995 on the allegation that on 17.12.1994 when the custom authorities raided the factory namely M/s Hari Om Engineers, Chikhli, Valsad Road, Gujarat, they have discovered certain quantity of mandrax tablets. The said complaint is for the offences punishable under Sections 22, 23, 25A R/w Sections 9A, 29A, 25, 29, 31, 31A & 67 of NDPS Act, along with the offences punishable under Sections 120B IPC and Section 135A of Customs Act. Criminal Case Nos. 113/95, 417/95 and 325/95 were filed before the Special District & Sessions Judge, NDPS, Madurai. In two criminal cases, along with present petitioners, others were also arraigned as accused. Certified copies of the charge in three cases are tendered to this Court during the course of oral arguments. True zerox copies of charges framed by ld. Sessions Judge, Madurai were already produced on the date of institution of the present application. In three criminal cases, ld. Sessions Judge, Madurai has framed charge on 28.8.1995. Meanwhile, on the strength of the complaint (OR No.5/94) filed by the Asstt. Commissioner of Customs, Bangalore, Special Criminal Case No. 90/96 was instituted in the Court of Sessions, at Bangalore. But was three cases were already pending before the Sessions Court at Madurai, complainant Asstt. Commissioner of Customs, Bangalore Mr. P. Rangaswami approached the Hon'ble Apex Court vide Transfer Petition (Criminal) No. 159/97 and got Bangalore case transferred to the Court of Sessions, NDPS, at Madurai vide order dated 23.3.1998 and directed the Ld. Special Judge (NDPS), Madurai to try the transferred Bangalore case along with Criminal Case No. 113/95 titled as " K.S. Gnanashekar, Supdt. of Central Excise v/s Shri Prem Pratap Singh Sisodiya and others." Ultimately, ld. Judge trying three cases against the accused persons including the present petitioners, registered Criminal Case No. 662/98 and framed charges against both the petitionersaccused on 27.10.1998. It is contended by the petitioners that after trial, the accused are acquitted. In all the four criminal cases, present petitioners-accused were charged for various offences including the charge of conspiracy or to do the act in furtherance of the said conspiracy. If it is seen chronologically, the present petitioners, along with other accused are charged in different criminal cases as under :-

(i) Criminal Case No. 113/95. In this case, both the petitioners- accused were charged for

the offences punishable under Sections 29, S.8(c) R/w S.22, S.9 R/w S. 25A of NDPS Act and under Section 135 of the Customs Act.

(ii) Criminal Case No. 417/95. In this case, both the accused along with two others, were charged for the offences punishable under Sections 29, S.8(c) R/w 22 & 29, 23 R/w S.28, S.29 R/w S.25 of NDPS Act;

(iii) Criminal Case No. 325/95. In this case, both the accused along with two others, were charged for the offences punishable under Sections 29, 22, S.8(C) R/w S.22 of NDPS Act and under Section 135 of the Customs Act.

(iv) Criminal Case No. 562/98 (Bangalore Case). In this case, both the accused were charged for the offences punishable under Sections 29, 22, NDPS Act;

5. The charge of conspiracy to manufacture, possess, transport, sell inter-State and to export out of India is framed and the same is faced by the accused in full-fledged trial. Every act of possession, manufacture, transportation inter-State are all overt act pursuant to the alleged conspiracy. Hence, according to ld. Senior Counsel Mr. Barot , they formed part of the same transaction. Hence, different or successive act cannot be considered. If arrest is made and complaint is filed, then subsequent complaint is not sustainable at law. The say of ld. Sr. Counsel Mr. Barot is that this is more so when the person has been acquitted of the charge of conspiracy and also charge of manufacture of mandrax tablets at Chikhli after the lawful trial. The act of manufacturing mandrax tablets at Chikhli factory was the backbone of the trial conducted by the ld. Sessions Judge (NDPS), Madurai. There cannot be trial at Valsad for the same cause. The same would be barred by the principles of "issue estoppel". Section 300(4) of CrPC bars even trial of a person acquitted and impleaded for the same offence or on the same facts for which different charges might have been framed. It is on record that for Valsad case, therer was no arrest ansd after filing of the complaint, Prisoner Transfer Warrant was issued to the Jailor at Madurai to transfer the petitioners to face the trial at Valsad. According to Mr. Barot, in Valsad case, number of sections are appearing, but so far as the complaint of the offence punishable under Section 31 or 31A of NDPS Act is concerned, it cannot sustain against the petitioners as it can be applied only when the accused are tried for the

second offence where the first charge has resulted into conviction. The petitioners are acquitted and it is not the case of the prosecution that they were earlier convicted in any other offence under the NDPS Act. Charge of Section 120B IPC is redundant because charge of conspiracy is an independent charge punishable under Section 29 of NDPS Act and the same is applied. Therefore, there cannot be two different charges of conspiracy. Section 120B of IPC is general provision for criminal conspiracy whereas Section 29 of NDPS Act is special and independent provision to deal with conspiracy qua narcotic & psychotropic substances. So far as Section 27A of the NDPS Act is concerned applied in the case of the present petitioners, can be applied when a person indulges in financing activities specified in a particular sub-clause or who harbours any person engaged in any of the mentioned activities. There is no averment in the complaint that their status is of financer or a persons who have harboured a person indulged in the mentioned activities. On the contrary, the complaint filed at Valsad poses both these appellants- accused as main accused. Section 67 referred to in the complaint confers powers to call for certain information etc. It is not a penal provision. So, ld. Sr. Counsel Mr. Barot has submitted that the present petitioners have already faced the trial and have been acquitted of all the substantive charges/offences levelled against them in the instant compliant and, therefore, they cannot be forced to face the trial.

6. The present petitioners by filing Transfer Petition (CRL) No. 173/95, have attempted to get the Valsad case transferred to Madurai Court as the complaint was filed in connection with same transaction or at least on the same facts and material and on same or similar documents, but surprisingly, transfer petition filed by the petitioners was resisted by the complainant. One one hand, custom authorities at Bangalore prays for transfer of Bangalore case to Madurai Court and on the other hand, authorities of the same department have resisted the transfer of the case from Valsad to Madurai. Mr. Anant S.Dave, ld. Central Govt. Standing Counsel has submitted that the Apex Court has found that the Valsad case is substantially different and pendency of the case at Valsad was not otherwise illegal and, therefore, the department had resisted transfer petition. Certified copy of the affidavit filed by the complainant Mr. A.C. Patel, Supdt. of Customs, Valsad is brought before this Court. Copy of the order of the Apex Court dated 22.4.1996 disposing of transfer application is also on record. Order of the Apex Court has been referred by the

petitioners in the petition wherein the Apex Court has said that;

"we do not consider it appropriate to transfer any of the cases to another Court as prayed for in this Transfer Petition. However, if on conclusion of any of the trials, the Petitioners are likely to be prejudiced as a result of pendency of the remaining trials in some other Courts. The Petitioners would have liberty at that time to make a suitable prayer which may be appropriate in the then existing circumstances. We deem it fit to make these observations while dismissing this Transfer Petition, in view of the fact that the only penalty prescribed for the offence is the penalty of death. The Transfer Petition is disposed of in those terms."

If above order is carefully read and considered, the words " we deem it fit to make these observations while dismissing this Transfer Petition, in view of the fact that the only penalty prescribed for the offence is the penalty of death", are relevant so far as present petition is concerned. It is important to note that the Apex Court has also observed that the petitioners would have liberty to make a suitable prayer which may be appropriate in the then existing circumstances. (emphasis supplied). As the accused are acquitted by the trial Court, the question of imposition of death penalty does not arise. If Valsad case would have been transferred to Madurai and the trial would have resulted into conviction of the petitioners, even then, I am afraid that trial Court could have convicted the present petitioners for the offences punishable under Sections 31A of the NDPS Act. It is not necessary to quote Section 31A of the Act which deals with the death penalty for certain offences after previous conviction.

7. This petition has been moved as the petitioners were granted liberty to make suitable prayer at appropriate stage by the Apex Court. Even otherwise in each case where petitioner is able to show that his say is not a defence version only and the point raised touches the sustainability, the powers under Sec.482 of CrPC can be invoked irrespective of the fact wehther plea of issue estoppel under Section 300 of CrPC is available or not. It is averred that now is the time when the case pending in Valsad Court namely Special Criminal Case No. 70/95 is likely to be taken up and the trial in the aforesaid circumstances and set of facts available on record, is not sustainable. On careful reading of the affidavit filed by the complainant Mr. A.C. Patel

before the Hon'ble Apex Court, it transpires that the transfer was resisted mainly on the ground of hardship, inconvenience to the department as well as number of witnesses to be examined, expected huge expenses and other difficulties like language problem etc. I would like to quote sub-para (7) of para-5 as well as para-6 of the affidavit, which says that :-

"5(vii) With reference to para (m), I say that there are 21 Panchanamas drawn in the case file with Navsari Court, in addition to which 102 statements of different persons were also recorded and 78 witnesses are cited for examination in the Court and they are residing in District Valsad Gujarat State and in the surrounding areas. Moreover 199 documents over and above test results etc. collected as evidences in this case also required to be produced and proved in the Hon'ble Court at Navsari. The hardship to be caused due to transfer of this case to Madurai to the above referred witnesses, independent Panchanama witnesses and the concerned persons and lot of Government officials, whose statements are recorded will be much more than to the Petitioners. Moreover, a number of officers who participated in this case may also be required to attend the Hon'ble Court at Madurai which will also lead to hardship to them and the Government will have to bear the huge expenses on this account. Again most of these documents are in Gujarati language. Many witnesses know only Gujarati language and they are illiterate. It will also be difficult for them to travel such a long distance. They will be afraid to go to unknown place for deposing against hardened criminals. The financial burden and hardship caused to Government officers and witnesses (around 78) would be much greater than the Petitioner. This may lead to miscarriage of justice, if many witnesses are not able to go to Madurai and the department's case may be weakened due to non-appearance. It may take a lot of time (in years) by virtue of giving dates to the witnesses.

6. In view of the above averments and submissions, I submit that it would not be in the interest of justice to transfer C.C. No. 70 of 1995 to the Special Judge, Madurai, Tamil Nadu as it is likely to stall the progress of the cases

pending, before the S.L.P., which are otherwise at an advance stage. The other accused are likely to suffer hardship in case the transfer petition is allowed. I further say that majority of the prosecution witnesses are local people, who know Gujarati language and as such may be handicapped in giving evidence at a place where the court language is Tamil. The prosecution is also likely to suffer huge financial losses in case the transfer is allowed.

It is, therefore, submitted that it would neither be in the interest of justice, nor expedient for expeditious trial to transfer the case as prayed for."

So, it would not be legal or proper to agree with the submission of Mr. Anant S.Dave, ld. Central Govt. Standing Counsel that the transfer application was dismissed on merits and it was concluded positively that Valsad case is altogether a different case so far as present two petitioners are concerned.

8. The affidavit of resistance filed on behalf of respondent no.1 is based on the contents of the affidavit filed by the department in the transfer petition preferred before the Apex Court by the petitioners and it is contended that the facts of the case at Valsad are totally different than the earlier case. The fact that 21 panchanamas were drawn in addition to 102 statements of different persons were recorded and 78 persons are cited as witnesses for the examination in the Court, would not be a matter of much relevance, though para-8 of the affidavit mainly narrates this procedural aspect. On the contrary, during the course of oral submissions, it has been contended by Mr. Dave that the raiding officer who has also investigated Valsad case for which complaint at Valsad has been filed, was one of the witnesses in the criminal cases tried by Madurai Court. Not only that, his deposition has been recorded before the Sessions Court at Madurai. Mr. B.C Patel was the officer concerned. When the transfer application was filed before the Hon'ble Apex Court, Mr. A.C. Patel was in the office of Superintendent of Customs, as successor. It would be relevant to quote some of the part of his examination-in-chie. Mr. B.C. Patel, in the month of September, 1995, was working as Superintendent of Customs (Preventive), Custom Task Force, Valsad. He has stated in his deposition before Madurai Court that :-

"..... The Asstt. Commissioner, Customs had

told me that Central Excise Officers have seized mandrax tablets at M/s Hari Om Engineers, Chikhli and they required help of customs and therefore, I proceeded to the factory along with my staff. Previously the customs officers at Tuticorin informed about the seizure of mandrax tablets at Tuticorin which were sent from Hari Om Engineers, to the Commissioner of Central Excise, Surat, who in turn sent his officers to factory premises at M/s Hari Om Engineers at Chikhli. Then effected seizure of mandrax tablets on 17.12.1994 and on 19.12.1994 the Central Excise Officers asked for the help of customs officers of Valsad and Surat."

He has further deposed that -

" Therefore, the whole investigation was handed over to me as Superintendent of Customs Task Force of Valsad (the learned Spl.P.P. has questioned : Who is Vijaya Sing ? Witness says that : Vijaya Sing who is Prem Pratap Sing Sisodia. This question is strongly opposed by the learned counsel for the Accused 1 and 2, objection over ruled.) During the investigation I collected information that the owners of the M/s Hari Om Engineers, Chikhli, have dispatched consigned two consignments of Chlorine Gas Cylinders containing mandrax tablets each consignment of seven such cylinders during June 1994 and July 1994 through Sakti Cargo Movers of Surat. Thereafter, I proceeded to Sakti Cargo Movers on 19.1.1995 and interrogated and recorded the statement of Mr. Kanwal Kishore Arrora, Director of Sakti Cargo Movers Private Ltd. who deposed that one such consignment on 19.6.1994 and another on 2.7.1994, each contained seven cylinders i.e. 14 cylinders of chlorine gas were transported from his godown at Jeyanchi Singh Compound, Near Poonapatia Post Magob District : Surat to Madras in the name of consignor Padmini Agencies, consignee-self- and both the above consignments were sent through M/s Batco Roadways, Madras."

He has further stated in his examination-in-chief that-

" My investigation discloses after recording those statement and connected materials

I came to the conclusion that they are not deposing wholly the right answers (this question is opposed by the defence) I, therefore, closed the statement here and at Gujarat I contacted number of persons in whose contact both the accused, interrogated them and recorded statements which revealed that they had manufactured mandrax tablets and cleared the same by using various fictitious names. (This question is also objected by the learned counsel for the A.1 & A.2). On 12.5.1995 as requested by the D.R.I. Madras, the statements Ex.P.94 to 99 were sent to D.R.I. Madras for further action."

9. It is on record that exh.94 referred to by Mr. B.C.Patel before Madurai Court is nothing but the statement allegedly recorded by him under Section 67 & 108 of the Customs Act of petitioner accused Mr. Anil Desai. Exh.95 to 97 are the Further Statements of very accused Anil Desai. Exh.98 & 99 are the statement and further statement of accused petitioner no.1 Prem Pratap Singh Sisodia. These statements are also allegedly recorded under the provisions of sections 67 & 108 of the Customs Act. Though, respondent side has placed reliance on some observations made by the ld. Sessions Judge of Valsad at Navsari while dealing with Cri. Misc. Application No.323/99 for bail and zerox copy of the order passed below said bail application is also produced. Rejection of bail plea considering the gravity of the offence impliedly saying it to be a new or other case, would not be important or material. Such submission does not give any strength to the say of the respondents. Present prosecution is after termination of all previous cases qua same or similar transections. It is rightly argued by Mr. Barot that in this case, the approach and attitude of Gujarat Customs Authorities is biased and authorities intend to see that the petitioners are there to face fresh trial and remain in judicial custody for the very alleged wrong. The petitioners have mainly referred the provisions of Section 300 of CrPC in general and Section 300(1) of CrPC in particular. I would like to quote the relevant provisions of CrPC;

"300(1). A person who has once been tried by the Court having competent jurisdiction for a offence and convicted or acquitted of such offence shall, while such conviction or acquittal remaining in force, not to be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different

charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof; "

10. The facts leading to the present case, if considered, then it can be said that the provisions of Section 300 of CrPC are applicable to the facts of the present case. Apparently, the petitioners are the persons who have been tried by the court of competent jurisdiction i.e. court of Spl.Judge, NDPS, Madurai. The petitioners- accused are acquitted and acquittal of the petitioners today is in force. In the decision reported in the case of Mahdev Gir v/s Emperor, 14 Cr.L.J. P.145, it has been held as under :-

" Where as person has been tried or convicted of an offence, arising out of a particular set of facts, he cannot, while such conviction of acquittal remains in force, be again tried in respect of any offence based on the same facts, unless the case can be brought under the one or the other specific exception to the rule provided by the Section."

In the case of Manipur Administration, Manipur

v/s Thokchom Bira Singh, reported in AIR 1965 SC 87, the

Apex Court has observed as under :-

" The rule of issue estoppel in a criminal trial is that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of S.403(2). The rule is not the same as the plea of double jeopardy or autrefois acquit. The rule does not introduce any variation in the Code of Criminal Procedure either in investigation, enquiry or trial. It also does not prevent the trial of any offence as does autrefois acquit but only precludes evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding recorded at an

earlier criminal trial before a court of competent jurisdiction. The rule thus relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court at a previous trial.

Further, S.403, Cr.P.C. does not preclude the applicability of this rule of issue estoppel. The rule being one which is in accord with sound principle and supported by high authority and there being a decision of Supreme Court which has accepted it as a proper one to be adopted, there is no reason for discarding it. "

11. In reference to the decision of the Apex Court in the case of Pritam Singh v/s State of Punjab, AIR 1956 SC 415, the Apex Court has enlarged the ambit of Section 300 CrPC in comparison with Article 20(2) of Constitution of India which provides for a bar on second prosecution and punishment for the same offence more than once. The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that, it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. This Court is informed that some of the documents which are relevant in the trial before the Valsad Court, were also part of the prosecution case before the court of ld. Spl.Judge, NDPS, Madurai. The Supreme Court has dealt with legal position under Section 300 CrPC in the case of State v/s Nalini, 1999 Supp. SCC 253 (known as Rajiv Gandhi Murder case). The Apex Court has observed as under :-

" The well-known maxim "nemo debet bis vexari pro eadem causa" (no person should be twice vexed for the same offence) embodies the well-established common law rule that no one should be put to peril twice for the same offence. The principle which is sought to be incorporated into Section 300 of the Criminal Procedure Code is that no man should be vexed with more than one trial for offence arising out of identical acts committed by him. When an offence has already been the subject of judicial adjudication. Whether it ended in acquittal or conviction, it is negation of criminal justice to allow repetition of the adjudication in a separate trial on the same set of facts."

12. It is rightly submitted by Mr. Barot that the principle of autrefois convict embodied in Article 20(2) of the Constitution of India, if compared to Section 300 of the Criminal Procedure Code combines both autrefois convict and autrefois acquit. Protective wings of Section 300 CrPC, therefore, are wider. It would be proper at this stage to refer to the provisions of Section 221 of the CrPC which reads as under:-

"221. Where it is doubtful what offence has been committed: (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offence, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

13. It is tobe appreciated that for the offences for which petitioners have been tried either they only or with others are the same offences or the facts are such for which different charge from the one made against them might have been made Under Section 1 of Section 221 of CrPC. When the charges of conspiracy and the charges including the charge of conspiracy and the charges include the charge of manufacture, possession, transport, export etc. etc. it ought to have been appreciated that the pending case in the Valsad is on the same facts and same evidence as ultimately when the charge of Section 29 of alleged which is equivalent to Section 120(B) of the IPC and as it is a good law to say that conspiracy is to be inferred and, therefore, when conspiracy is alleged is every one of the aforesaid four trials and also in this present case in Valsad, the allegation amount to offence arising out of "same transaction".

14. The ratio propounded by the Apex Court in the Case of State of Andhra Pradesh v/s Cheemlapati Gyneshwar Rao and other, reported in AIR 1963 P.1850, positively helps the petitioners. The Apex Court has considered the meaning of word "same transaction". Observations of

their Lordships read as under:-

" The question is whether for the purposes of S.239(d) it is necessary to ascertain anything more than this that the different offences were committed in the course of the same transaction or whether it must further be ascertained whether the acts are intrinsically connected with one another. Under Section 235(1) what has to be ascertained is whether the offences arise out of acts so connected together as to form the same transaction, but the words "so connected together as to form" are not repeated under (sic) the words "same transaction" in S.239. What has to be ascertained then is whether these words are also to be read in all the clauses of S.239 which refer to the same transaction. Section 235(1), while providing for the joint trial for more than one offence, indicates that there must be connection between a series of acts before they could be regarded as forming the same transaction. What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to be undertaken a definition of that which the legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining expression. But it is generally thought that where there is proximity of time or place of unity of purpose and design or continuity of action in respect of series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredients for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to form" in cls. (a),(c)(six) and (d) of Sec.239 would make little difference. Now, a transaction may consist of an

isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transactions of transactions. Therefore, even if the expression "same transaction" alone had been used in S.235(1), it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression "same transaction" occurring in Cls. (a),(c)(six) and (d) of S.239 as well as that occurring in S.235(1) ought to be given the same meaning according to the normal rule of construction of statutes."

15. Decision of this Court in the case of Dinkarray Raghnath v/s The State, reported in AIR 1963 Gujarat P.15, this Court has also dealt with the meaning of words "same transaction". In para-26 of the judgment, this Court has observed as under:-

" The expression "same transaction" used in S.235 of the Code is difficult if not incapable of exact definition. The question whether the acts are so connected together as to form one transaction or not would depend on facts and circumstances of a particular case. It is not possible to lay down any comprehensive formula of universal application. The real and substantial test for determination of the question, is the continuity of action and purpose. Under S.235 of the Code, the first element to establish is a series of acts, which would necessarily imply the acts being connected together; but this would not be enough and it would have to be established further that the acts formed the same transaction. Mere sequence in time may establish the first element but not necessarily the other. But the expression "so connected together as to form the same transaction" must be given a reasonable and rational meaning and cannot be stretched into series of acts, which have no relation to each other. There must, therefore, be one continued thread of common purpose running through the acts to support a joinder of charge in respect thereof. However, mere difference in time or place between the commission of one offence and of another will not necessarily imply want of such continuity. They may yet be linked

together to form the same transaction. In our view, this test has been complied with in the case before us. In that view, it cannot be said that there was either any infringement in the mode of trial or that there was any misjoinder of charges. Therefore, no question either of illegality of the trial or one of jurisdiction of the learned Special Judge can possibly arise."

It has been further held in the said decision that:-

" The real and substantial test for determination of the question whether certain acts form one transaction is the continuity of action and purpose. The expression "so connected together as to form the same transaction" must be given a reasonable and rational meaning and cannot be stretched into series of acts, which have no relations to each other.There must, tehrefore, be one continued thead of common purpose running through the acts to support a joinder of charges in respect thereof. Moreover, mere difference in time or place between the commission of one offence and of another will not necessarily imply want of such continuity. They may yet be linked togetehr to form the same transaction."

There must, therefore, be a continued thread of common purpose running through the acts.

16. Decision in the case of Mohammad Safi v/s The State of West Bengal, reported in AIR 1966 SC P.69, deals with the well-known principle of criminal jurisprudence that no one should be put in jeopardy twice for the same offence.Thus, once a person is acquitted or convicted for a major offence, he or she cannot be tried again by joining some minor offences left out while initiating earlier trial. Simultaneously, the principle of "autrefois acquit" is not confiend to the cases falling within sub-section (1) of Section 300 and that generally no accused should be vexed with more than one trial for the offences arising out of the same transactions/ facts. In the case of Emperor v/s C.E.Ring, reported in AIR 1929 Bombay 296, the court was dealing with Section 120B of IPC. In reference to Section 239 of CrPC, Bombay High Court has observed that " the expression "in the course of the same transaction" used in S.239 must be understood as including both the immediate cause and effect of an

act or event, and also its collection, or relevant circumstances, the other necessary antecedents of its occurence, connected with it, at a reasonable distance of time, space, and cause and effect. (Emphasis supplied)."

17. Decision in the case of State of Andhra Pradesh v/s Chhemlapati Gyneshwara Rao (supra), goes to the root of the matter, where the Apex Court has held that different clauses of S.239 are not mutually exclusive but can be availed of cumulatively. The object of enacting S.239 is to avoid multiplicity of trials and the only limitation which could properly be placed on the trial of several persons for the same kind of or different offences would be that which considerations of justice and fairness would require. Paras-26 & 27 of the said decision are important for the purpose of this judgment. I had already reproduced relevant part of para-27 of the aforesaid in this judgment in para-14 above. I have gone through the judgment of Madurai Court acquitting accused which is produced before this Court and have also carefully considered the findings recorded by the said Court.

18. Pendency of the appeal against the order of acquittal, if any, recorded by Madurai Court, in view of the above discussion, would not be relevant. My attention is also drawn to the decision of the Apex Court in the case of Arif U. Patel v/s Assistant Director, Narcotic Control Bureau, South Zone, Madras-17, reported in 1996-I.L.W. (Cri.) 30. The said petition was moved by the petitioner with a prayer to issue writ of Habeas Corpus calling for the records of the respondent connected with his arrest and detention and also to quash the same . It was also prayed in that petition that petitioner Arif Patel be set at liberty forthwith. The petitioner was arrested for the offence punishable under NDPS Act. He was allegedly involved in illicit export of Hasish etc. to Israel etc. He was arrested by Narcotics Control Bureau, South Zone, Madras and was remanded to the custody in connection with the proceedings. It was alleged that he was exporting narcotic drugs and psychotropic substances namely Hasish and Mandrax tablets to foreign countries in contravention of the provisions of Sections 8, 23, 29 of NDPS Act and for the offences punishable under Sections 21, 25 R/w S.29 of the said Act. Though the case cited is of grant of bail by Special Court, it is important and relevant because it was specifically pleaded by the petitioner in the said case that his subsequent arrest after getting default bail for the alleged second export of mandrax tablets to South Africa, would not have been effected and,

therefore, he should be enlarged on bail. He has taken up plea of unsustainability of the order. When the petitioner Arif Patel was granted default bail by the Special Court, respondent department filed petition for cancellation of bail before the High Court of Madras, but High Court dismissed the same. Respondent department thereafter filed Criminal Appeal before the Hon'ble Supreme Court which was also dismissed on 1.5.1995. On the date when order was pronounced in the criminal appeal, respondent sought imposition of additional conditions on the petitioner over and above the conditions on which he was granted bail. Hon'ble Supreme Court directed respondent department to move the Special Court if it intends to impose additional condition. On 2.5.1995, respondent moved the Special Court to issue arrest warrant against the petitioner in connection with the proceedings for alleged illicit export of mandrax tablets to Swatziland and arrested the petitioner on 2.5.1995. Thereafter, the petitioner was remitted to the judicial custody. The petitioner took a specific plea that these two offences were committed pursuant to the single conspiracy and they must be treated as a single transaction and, therefore, subsequent detention for the alleged illicit export of mandrax tablets to Swatziland was illegal. Madras High Court had rejected the plea raised by the petitioner accused Arif Patel. But the said decision was challenged before the Apex Court vide SLP (Criminal) No. 3727/95. Zerox copy of the unreported decision of the Apex Court dated 16.1.1996 is produced before this Court during the course of oral submissions. While granting leave, Apex Court allowed the appeal and held as under :-

" As it appears to us that essentially such smuggling activities in furtherance of the conspiracy between the appellant and others during the said period of April 1992 to March 1994 was the subject matter of earlier complaint in which the question of bail had already been considered in the manner, indicated hereinbefore, the subsequent complaint containing further details of one of such smuggling activities pursuant to the said conspiracy should not have been taken into consideration for the purpose of deciding the question of granting bail when such question had been finally decided by this Court. We, therefore, set aside the impugned order of remand and the impugned judgment of the High Court and direct that the appellant should be forthwith released on bail."

By allowing the appeal, the Apex Court has also

observed that "the ld. Special Judge, on the basis of the said complaint which prima facie at that stage only disclosed further materials of the conspiracy relating to smuggling of psychotropic drugs (mandrax) to South Africa regions, such activities formed the subject matter of similar commplaint."

19. The plea raised before this Court by the petitioners is the plea of sustainability of the proceedings and, therefore, prayer for quashing and setting aside the criminal case pending in Valsad Court by invoking inherent jurisdiction, shall have to be allowed. There is no justification to continue with the trial qua present petitioners at all. However, at the end of trial at Valsad, if ld. Spl.Judge decdied to confiscate any property of the petitioners under the scheme of NDPS Act, then for that purpose and procdure, the status of the present petitioners shall remain relevant and it will be open for the trial Court to decide such aspect after offering an opportunity of hearing to the petitioners irrespective of result of this petition.

20. In the result, this petition is allowed. Criminal Case No. 70/95 pending in the Court of ld. Sessions Judge, Valsad at Navsari and the proceedings initiated in connection with the said case, are hereby quashed and set aside qua the present petitioners only. It is clarified that trial - proceedings against other accused who were not tried by Madurai Court, shall continue. It is further clarified that if at the end of trial at Valsad, if ld. Spl.Judge decdied to confiscate any property of the petitioners under the scheme of NDPS Act, then for that purpose and procedure, the status of the present petitioners shall remain relevant and it will be open for the trial Court to decide such aspect after offering an opportunity of hearing to the petitioners irrespective of result of this petition.

23. Rule is made absolute accordingly. Yadi to the concerned Courts.

20.3.2002 [C.K. BUCH, J]
*rawal

FURTHER ORDER

After above judgment came to be pronounced, ld. Addl. Standing Counsel Mr. Anant S.Dave for Union of

India has prayed that this judgment and order be placed under suspension for a period of 3 (three) weeks as respondent No.1 - complainant department may decide to approach the higher forum.

The petitioners are on bail and so no formal order of supsnesion of judgment and order is required to be passed. Even otherwise, it would always be open for respondent No.1 department to challenge the judgment and order, if department is aggrieved by the sdame. Hence, request made byi Mr. Anant S.Dave for Union of India is not accepted.

20.3.2002 [C.K. BUCH, J]
*rawal